

Exhibit 1

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

--oOo--

WAYMO LLC,

Plaintiff,

Case

vs.

No. 3:17-cv-00939-WHA

UBER TECHNOLOGIES, INC.;

OTTOMOTTO LLC; OTTO TRUCKING LLC,

Defendants.

/

HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

VIDEOTAPED DEPOSITION OF JOHN WILLIAM GURLEY
THURSDAY, AUGUST 24, 2017

Reported by:

Anrae Wimberley

CSR No. 7778

Job No. 2687934

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1	that was referenced in the board	11:02:42
2	meeting -- board -- withdrawn.	11:02:46
3	Did you ask for the diligence report that was	11:02:49
4	referenced in Exhibit 910 as a result of reading the	11:02:56
5	preliminary injunction order?	11:02:58
6	MR. FLUMENBAUM: I'll let him answer yes or no to	11:03:00
7	that, but I don't want that to be a waiver.	11:03:02
8	Will you agree to that?	11:03:04
9	MR. VERHOEVEN: Agreed.	11:03:05
10	MR. FLUMENBAUM: You can answer that yes or no.	11:03:06
11	THE WITNESS: Yes.	11:03:08
12	BY MR. VERHOEVEN:	11:03:08
13	Q. Did you ask for it?	11:03:10
14	MR. FLUMENBAUM: Same rule?	11:03:11
15	MR. VERHOEVEN: Yes.	11:03:14
16	BY MR. VERHOEVEN:	11:03:14
17	Q. Yes or no?	11:03:16
18	A. Yes.	11:03:16
19	Q. Did you read it?	11:03:18
20	MR. FLUMENBAUM: Again, same rule?	11:03:20
21	MR. VERHOEVEN: Yes.	11:03:21
22	MR. FLUMENBAUM: You can answer that yes or no.	11:03:24
23	THE WITNESS: Yes.	11:03:26
24	BY MR. VERHOEVEN:	11:03:26
25	Q. And that was around May 12th of this year?	11:03:30

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1	MR. FLUMENBAUM: You can answer that yes or no.	11:03:34
2	THE WITNESS: I don't have any notes in front of	11:03:36
3	me. That sounds like it would be in the general time	11:03:38
4	frame, but I . . . it could be off, you know, by a	11:03:45
5	week or two. I don't have the specific date.	11:03:48
6	BY MR. VERHOEVEN:	11:03:48
7	Q. In that range?	11:03:49
8	A. In that range.	11:03:50
9	Q. Why did you ask for it?	11:03:52
10	MR. FLUMENBAUM: Again, I'll let you answer that	11:03:57
11	question, but don't talk about any conversations that	11:04:06
12	you had with either Uber's counsel or your personal	11:04:10
13	counsel at this point.	11:04:14
14	THE WITNESS: As I already referenced, I felt that	11:04:22
15	this litigation, the one we're involved in today, was	11:04:26
16	critical and important to the company. Once I had	11:04:30
17	gotten up to speed on Anthony's decision to plead the	11:04:35
18	Fifth and the fact that we should be terminating, I	11:04:39
19	felt that it was my duty as a board member to try and	11:04:42
20	know as much as possible about this situation so I	11:04:45
21	could advise the company in the best possible way.	11:04:54
22	BY MR. VERHOEVEN:	11:04:54
23	Q. After you read the diligence report, did you	11:04:59
24	take any action based on reading it? Yes or no?	11:05:06
25	MR. FLUMENBAUM: Again, no waiver; correct?	11:05:08

1 what's in the due diligence report, so -- is there a 11:37:58
2 way you can rephrase that question? 11:38:02
3 MR. VERHOEVEN: I don't think so. I'm asking the 11:38:06
4 witness -- I'll ask it again. 11:38:08
5 BY MR. VERHOEVEN: 11:38:08
6 Q. Without revealing the substance of the 11:38:11
7 diligence report, if you had known about it at the 11:38:16
8 time of the transaction, would you have objected to 11:38:19
9 moving forward with the transaction? 11:38:22
10 MR. BRILLE: Object to form. 11:38:23
11 MR. FLUMENBAUM: Would you agree that follows our 11:38:25
12 non-waiver -- 11:38:26
13 MR. VERHOEVEN: Yes. 11:38:28
14 THE WITNESS: Yes. 11:38:32
15 MR. VERHOEVEN: And if I ask why, I assume I'll 11:38:40
16 get an instruction? 11:38:41
17 MR. FLUMENBAUM: You will until that report is 11:38:42
18 released. 11:38:44
19 MR. VERHOEVEN: Okay. 11:38:44
20 BY MR. VERHOEVEN:
21 Q. Was that -- withdrawn. 11:38:48
22 Would you have considered that to be material 11:38:52
23 information with respect to whether to approve the 11:38:57
24 transaction or not? 11:38:59
25 MR. FLUMENBAUM: Same -- not going to argue 11:39:03

1	waiver?	11:39:03
2	MR. VERHOEVEN: Correct.	11:39:04
3	MR. BRILLE: Object to form.	11:39:05
4	MR. FLUMENBAUM: You can answer yes or no.	11:39:07
5	THE WITNESS: Yes.	11:39:08

6	BY MR. VERHOEVEN:	11:39:08
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7	Q. What was your reaction when you saw -- when	11:39:32
8	you read the Stroz report with respect to the fact	11:39:37
9	that it was not disclosed to the board at the time of	11:39:39
10	the acquisition? Were you upset?	11:39:43
11	MR. BRILLE: I'll object to form.	11:39:46
12	MR. FLUMENBAUM: I'll object to the form also.	11:39:49
13	Again I'll let him answer that without claim of	11:39:55
14	waiver.	11:39:56
15	MR. VERHOEVEN: Yes.	11:39:56
16	THE WITNESS: Yes.	11:39:58

17	BY MR. VERHOEVEN:	11:39:58
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18	Q. Why?	11:40:00
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19	MR. BRILLE: Same objections.	11:40:01
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20	MR. VERHOEVEN: I'm asking for his reaction.	11:40:03
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21	MR. FLUMENBAUM: So you got -- you got his answer.	11:40:06
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22	He can't answer more than that without going into	11:40:09
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23	substance.	11:40:10
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24	BY MR. VERHOEVEN:	11:40:10
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25	Q. Did you call up Mr. Levandowski after reading	11:40:13
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1	A. Yep.	12:13:45
2	Q. And your understanding that this perception	12:13:50
3	of lacking -- withdrawn.	12:13:54
4	This reference to "lacks ethical and moral	12:13:58
5	values" in this sentence is, in part, a reference to	12:14:01
6	the Waymo litigation, correct?	12:14:03
7	MR. BRILLE: Object to form.	12:14:07
8	THE WITNESS: I don't think it's a specific	12:14:08
9	reflection on that. I think there -- as -- there are	12:14:14
10	numerous other issues that had been going on in the	12:14:18
11	company.	12:14:18
12	And I think if you read those articles that I	12:14:21
13	mentioned that were calling for the board to ask him	12:14:25
14	to resign, that created this public perception, you	12:14:31
15	would see much more references around that to other	12:14:34
16	things.	12:14:36
17	BY MR. VERHOEVEN:	12:14:36
18	Q. Based on what you know now, including your	12:14:39
19	review of the diligence report, don't you believe that	12:14:45
20	the conduct of Mr. Kalanick and his team, with respect	12:14:50
21	to the Otto acquisition, reflected a lack of ethical	12:14:58
22	and moral values?	12:15:01
23	MR. BRILLE: Object to form.	12:15:08
24	THE WITNESS: I don't know. For me, that	12:15:12
25	particular thing is really a question of materiality	12:15:15

1 and whether you feel a responsibility of disclosure, 12:15:22
2 which gets into understanding the criticality of 12:15:28
3 something, whether or not you're withholding 12:15:32
4 information that could be critical in that 12:15:35
5 decision-making process. 12:15:36

6 I can't speak to the reasoning for them 12:15:42
7 making those decisions; and, therefore, then apply 12:15:45
8 some type of label like this. 12:15:49

9 I certainly think, as is expressed later 12:15:52
10 in -- in our legal action, that it -- that it crossed 12:15:56
11 a line of violating fraud and fiduciary duty. 12:16:02

12 And so to the extent that you want to wrap 12:16:04
13 those into those words, I guess you could, but I 12:16:07
14 don't -- I -- I wouldn't tie that specifically to that 12:16:11
15 label. 12:16:11

16 That's not what we were thinking about when 12:16:13
17 we wrote that. This says the "public perception is," 12:16:17
18 and I think that public perception, which is well 12:16:20
19 documented in a bunch of articles, was driven more by 12:16:23
20 other activities. 12:16:24

21 BY MR. VERHOEVEN: 12:16:24

22 Q. You believe that Mr. Kalanick committed fraud 12:16:26
23 on the board of directors by failing to disclose the 12:16:30
24 facts underlying the Otto acquisition, right? 12:16:34

25 A. Yes. 12:16:35

1	Do you see that?	12:30:24
2	A. Yes.	12:30:25
3	Q. And this refers, in part, to your prior	12:30:30
4	testimony that if Benchmark had known about the	12:30:35
5	information contained in the Stroz report, it would	12:30:37
6	never have agreed to this amendment, right?	12:30:45
7	MR. BRILLE: Object to the form.	12:30:46
8	MR. FLUMENBAUM: Object to the form.	12:30:47
9	You can answer.	
10	BY MR. VERHOEVEN:	
11	Q. Well, you're correct. Let me rephrase.	12:30:51
12	This refers to your prior testimony that	12:30:54
13	Benchmark never would have approved the transaction	12:30:56
14	had it been aware of the Stroz report, correct?	12:31:02
15	MR. BRILLE: Same objection.	12:31:03
16	MR. FLUMENBAUM: Objection as to form, but you	12:31:05
17	may --	12:31:06
18	THE WITNESS: The only clarification I would make	12:31:08
19	is that there are many other matters, also.	12:31:10
20	BY MR. VERHOEVEN:	
21	Q. Yeah.	
22	A. But this is one of those. Yes, correct.	12:31:14
23	Q. But it's your contention that Benchmark would	12:31:18
24	not have approved the amended certificate of	12:31:18
25	incorporation referenced here, or the voting	12:31:22

1	agreement, if it had known the real facts behind the	12:31:25
2	Otto acquisition, isn't it?	12:31:28
3	MR. BRILLE: Object to form.	12:31:29
4	MR. FLUMENBAUM: You may answer.	12:31:30
5	THE WITNESS: Along with other things. But, yes.	12:31:32
6	That was one of -- of many other things.	12:31:36
7	BY MR. VERHOEVEN:	12:31:36
8	Q. The next sentence says:	12:31:46
9	"Kalanick also understood that these matters,	12:31:49
10	once revealed, would likely force him to resign as	12:31:53
11	Uber's CEO."	12:31:54
12	Do you see that?	12:31:55
13	A. I do.	12:31:56
14	Q. And one of those matters is the facts	12:32:00
15	underlying the Otto acquisition, correct?	12:32:02
16	MR. BRILLE: Object to form.	12:32:04
17	MR. FLUMENBAUM: You may answer.	12:32:05
18	THE WITNESS: Yes, one of those facts.	12:32:08
19	BY MR. VERHOEVEN:	12:32:08
20	Q. And throughout this sentence, if it refers to	12:32:21
21	these matters, your answer would be the same, that	12:32:24
22	included in the matters would be the Otto transaction?	12:32:28
23	MR. FLUMENBAUM: Objection as to form. But . . .	12:32:32
24	BY MR. VERHOEVEN:	
25	Q. I mean, you can see the next -- okay. I was	

1 That -- that discussion did take place at a 12:41:27
2 board meeting, as we had discussed. 12:41:28
3 The argument was to why that headline figure 12:41:32
4 was not un- -- was not unreasonable related to the 12:41:37
5 notion of the milestones that we've previously 12:41:41
6 discussed. 12:41:42
7 BY MR. VERHOEVEN: 12:41:42
8 Q. I direct your attention to paragraph 67. 12:42:14
9 A. Oh, wow. 12:42:15
10 Q. Page 30. All right. Take a second and read 12:42:31
11 it and tell me when you're ready to answer questions. 12:42:32
12 MR. FLUMENBAUM: Paragraph 67? 12:42:36
13 MR. VERHOEVEN: Paragraph 67. 12:42:38
14 (Witness reviews document.) 12:42:49
15 THE WITNESS: Okay. 12:42:50
16 BY MR. VERHOEVEN: 12:42:50
17 Q. And this -- this references: 12:42:51
18 "Kalanick's fraudulent statements and 12:42:54
19 omissions breached his fiduciary duties, including," 12:42:57
20 and then it gets more specific. 12:42:59
21 Do you see that? 12:43:00
22 A. Um-hum. 12:43:01
23 Q. Which of Mr. Kalanick's statements related to 12:43:08
24 the Otto transaction breached his fiduciary duties? 12:43:13
25 A. It would seem obvious that this statement 12:43:22

1 that was made to the board that the diligence, which, 12:43:26
2 as we already ascertained, was remarkably critical to 12:43:33
3 the transaction, in light of the presence of the 12:43:34
4 indemnity and all those things, was clean, left me -- 12:43:37
5 and I can't speak for the other board members -- with 12:43:40
6 an impression that is remarkably different from that 12:43:44
7 that I hold today. 12:43:46

8 Q. And I take it it's your belief that his 12:43:55
9 omission of that critical information during his 12:44:00
10 presentation also constituted fraud and a breach of 12:44:09
11 his fiduciary duties? 12:44:11

12 MR. BRILLE: Object to form. 12:44:12

13 THE WITNESS: That is correct. Once again, this 12:44:14
14 statement refers to other issues also. But with 12:44:20
15 regard to that specific issue, you are correct. 12:44:24

16 BY MR. VERHOEVEN: 12:44:24

17 Q. Does anything else come to mind, still on 12:44:47
18 paragraph 67 -- understanding it's a general 12:44:52
19 statement, but focusing specifically on the Otto 12:44:55
20 acquisition portion of it. 12:44:57

21 A. Um-hum. 12:44:59

22 Q. Does anything else come to mind, in addition 12:45:02
23 to what you've already testified to, that was either a 12:45:09
24 statement or omission by Mr. Kalanick that breached 12:45:13
25 his fiduciary duties or constituted fraud? 12:45:17

ERRATA SHEET

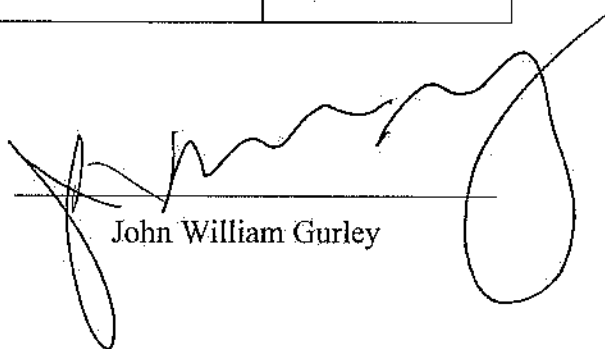
Case Name: *Waymo LLC v. Uber Technologies, Inc. et al*,
No. 17-cv-00939 (N.D. Cal.)

Witness Name: John William Gurley

Deposition Date: August 24, 2017

I wish to make the following changes for the following reasons:

Page/Line	From	To	Reason
4/13	"Christina"	"Kristina"	Misspelling
9/15	"Taskahima"	"Takashima"	Misspelling
11/6	"we're"	"we were"	Transcription Error
12/2	"might"	"mind"	Transcription Error
70/24	"Cruze"	"Cruise"	Misspelling
83/6; 83/7	"Sally"	"Salle"	Misspelling
83/5	"Twaun"	"Thuan"	Misspelling
120/13	"past"	"passed"	Transcription Error



John William Gurley

Subscribed and sworn to before me
 this ___ day of August, 2017.

 Notary Public

See attached
 Notary form
 of

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**CIVIL CODE § 1189**

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)

County of San Francisco)On September 5th, 2017 before me, Carrie Adair Paton, Notary Public,
Date Here Insert Name and Title of the Officerpersonally appeared John William Gurley
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature CW
Signature of Notary Public

Place Notary Seal Above

OPTIONAL

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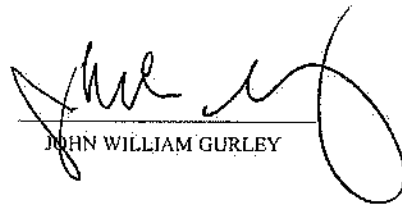
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Signer Is Representing: _____ Signer Is Representing: _____

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1 litigation. 13:05:33	1 Q. And you -- can you recall the specifics of 13:07:51
2 Q. Did you have a discussion with her about the 13:05:34	2 any of those conversations? 13:07:52
3 report? 13:05:35	3 A. I don't remember any of the specifics. 13:07:55
4 MR. FLUMENBAUM: You can answer -- you can answer 13:05:38	4 Q. Did he contribute during board meetings on 13:07:57
5 that yes or no, if you recall. 13:05:40	5 this subject? 13:07:59
6 THE WITNESS: I -- I -- I just don't recall. 13:05:46	6 A. Yes. 13:07:59
7 BY MR. VERHOEVEN: 13:05:46	7 Q. Can you remember what he said in any of those 13:08:01
8 Q. Do you think you would have? 13:05:49	8 meetings? 13:08:02
9 MR. FLUMENBAUM: Objection as to form. 13:05:51	9 A. I -- I don't. I just know that his -- I know 13:08:04
10 THE WITNESS: It's possible. 13:05:52	10 that that was his point of view. 13:08:06
11 BY MR. VERHOEVEN: 13:05:52	11 MR. VERHOEVEN: Thank you very much, Mr. Gurley. 13:08:28
12 Q. I mean, you sent it to her? 13:05:55	12 I have no further questions at this time. 13:08:31
13 A. Okay. If I did, then, it's likely that I 13:05:58	13 We have, as you've noticed, several privilege 13:08:34
14 did. 13:05:58	14 instructions which are currently in dispute. And if 13:08:39
15 Q. Have a conversation? 13:05:59	15 there's a ruling that certain documents have to be 13:08:43
16 A. Yeah.	16 produced, we -- just so you know, we may take the 13:08:47
17 Q. You can't remember the substance of any 13:06:02	17 position that you have to come back and answer some 13:08:49
18 conversation? 13:06:04	18 questions about that. 13:08:50
19 MR. FLUMENBAUM: Asked and answered. 13:06:08	19 THE WITNESS: Okay. 13:08:50
20 THE WITNESS: I -- I don't recall any specifics. 13:06:11	20 MR. VERHOEVEN: Thank you very much for your time. 13:08:53
21 MR. VERHOEVEN: You're supposed to only object to 13:06:12	21 THE WITNESS: Thank you.
22 form. 13:06:13	22 MR. FLUMENBAUM: Anybody else? 13:08:54
23 BY MR. VERHOEVEN: 13:06:13	23 MR. BRILLE: Not here, no. 13:08:56
24 Q. What about Mr. Bonderman? Did you send a 13:06:19	24 MR. FLUMENBAUM: Thank you. Thank you all. 13:08:58
25 copy of the report to him? 13:06:21	25 THE VIDEOGRAPHER: This concludes today's 13:09:01
Page 178	Page 180
1 A. I don't recall. 13:06:22	1 deposition of William Gurley, consisting of three 13:09:04
2 Q. Do you remember any conversations you had 13:06:26	2 DVDs. 13:09:05
3 with Mr. Bonderman about the report or the Otto 13:06:31	3 We're off the record at 1:09 p.m. 13:09:09
4 acquisition? 13:06:32	4 (Whereupon, the deposition was adjourned at
5 A. There were numerous discussions, as part of 13:06:38	5 1:09 p.m.)
6 the special committee, that may or may not have 13:06:43	6
7 involved the report, but those would be privileged. 13:06:46	7
8 Q. Was there lawyers in every meeting of the 13:06:49	8
9 special committee? 13:06:51	9
10 A. Yes. 13:06:51	10
11 Q. Who were they? 13:06:53	11
12 A. It was Patrick Robbins from Shearman. 13:06:57	12
13 Q. Anyone else? Any other firms? 13:07:03	13
14 A. No. No. Not as that -- not while I was a 13:07:06	14
15 member of the committee. 13:07:07	15
16 Q. Do you remember any conversations with 13:07:10	16
17 Mr. Bonderman outside of this -- of the committee 13:07:14	17
18 concerning the Otto acquisition? 13:07:20	18
19 A. I don't remember any specific conversations. 13:07:32	19
20 I would say that it's my opinion that he was also of 13:07:40	20
21 the belief that Anthony should have been terminated as 13:07:43	21
22 soon as he pled the Fifth. 13:07:45	22
23 Q. Is that based on conversations with him 13:07:47	23
24 generally? 13:07:49	24
25 A. Yes. 13:07:49	25
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JOHN WILLIAM GURLEY

1 FEDERAL CERTIFICATE OF DEPOSITION OFFICER
2 I, ANRAE WIMBERLEY, CSR NO. 7778, do hereby
declare:

3 That, prior to being examined, the witness named
4 in the foregoing deposition was by me duly sworn
pursuant to Section 30(f)(1) of the Federal Rules of
Civil Procedure and the deposition is a true record of
5 the testimony given by the witness;

6 That said deposition was taken down by me in
shorthand at the time and place therein named and
7 thereafter reduced to text under my direction;

8 X That the witness was requested to
review the transcript and make any changes to the
9 transcript as a result of that review pursuant to
Section 30(e) of the Federal Rules of Civil Procedure;
10 No changes have been provided by the
witness during the period allowed;

11 The changes made by the witness are
12 appended to the transcript;

13 No request was made that the transcript
be reviewed pursuant to Section 30(e) of the Federal
14 Rules of Civil Procedure.

15 I further declare that I have no interest in the
event of the action.

16 I declare under penalty of perjury under the laws
17 of the United States of America that the foregoing is
true and correct.

18 WITNESS my hand this 25th day of August, 2017.
19
20
21

22 
23
24

25 ANRAE WIMBERLEY, CSR NO. 7778